

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JOSHUA A. ROOM
Deputy Attorney General
4 State Bar No. 214663
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-1299
6 Facsimile: (415) 703-5480
Attorneys for Complainant

7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 4366

11 **TAMMY M. SMITH**
12 **1320 Cashew Road**
13 **Santa Rosa, CA 95403**

A C C U S A T I O N

14 **Pharmacy Technician License No. TCH 12242**

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
20 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

21 2. On or about March 18, 1994, the Board of Pharmacy issued Pharmacy Technician
22 License Number TCH 12242 to Tammy M. Smith (Respondent). The Pharmacy Technician
23 License was in full force and effect at all times relevant to the charges brought herein and will
24 expire on March 31, 2014, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board of Pharmacy (Board), Department of
27 Consumer Affairs, under the authority of the following laws. All section references are to the
28 Business and Professions Code (Code) unless otherwise indicated.

1 4. Section 4011 of the Code provides that the Board shall administer and enforce both
2 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances
3 Act [Health & Safety Code, § 11000 et seq.].

4 5. Section 4300(a) of the Code provides that every license issued by the Board may be
5 suspended or revoked.

6 6. Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration,
7 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
8 disciplinary action during the period within which the license may be renewed, restored, reissued
9 or reinstated. Section 4402(a) of the Code provides that any pharmacist license that is not
10 renewed within three years following its expiration may not be renewed, restored, or reinstated
11 and shall be canceled by operation of law at the end of the three-year period. Section 4402(e) of
12 the Code provides that any other license issued by the Board may be canceled by the Board if not
13 renewed within 60 days after its expiration, and any license canceled in this fashion may not be
14 reissued but will instead require a new application to seek reissuance.

15 STATUTORY AND REGULATORY PROVISIONS

16 7. Section 4301 of the Code provides, in pertinent part, that the Board shall take action
17 against any holder of a license who is guilty of “unprofessional conduct,” defined to include, but
18 not be limited to, any of the following:

19 (h) The administering to oneself, of any controlled substance, or the use of any dangerous
20 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
21 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
22 to the extent that the use impairs the ability of the person to conduct with safety to the public the
23 practice authorized by the license.

24 (l) The conviction of a crime substantially related to the qualifications, functions, and duties
25 of a licensee under this chapter.

26 8. Section 490 of the Code provides, in pertinent part, that the Board may suspend or
27 revoke a license when it finds that the licensee has been convicted of a crime substantially related
28 to the qualifications, functions or duties of the license.

9. California Code of Regulations, title 16, section 1770, states:

“For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered substantially related to the qualifications, functions or duties of a licensee or registrant if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by her license or registration in a manner consistent with the public health, safety, or welfare.”

10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation of the licensing act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

FIRST CAUSE FOR DISCIPLINE

(Conviction of Substantially Related Crime(s))

11. Respondent is subject to discipline under section 4301(l) and/or section 490 of the Code, by reference to California Code of Regulations, title 16, section 1770, for the conviction of substantially related crime(s), in that on or about August 29, 2011, in the criminal case *People v. Tammy Mae Smith*, Case No. SCR-604740 in Sonoma County Superior Court, Respondent was convicted of violating (1) Vehicle Code section 23152(a) (Driving under the influence of alcohol or drugs), a misdemeanor, with a special allegation pursuant to Vehicle Code section 23538(b)(2) for a blood alcohol level of 0.20% or more, and (2) Vehicle Code section 23152(b) (Driving with blood alcohol level of 0.08% or more), a misdemeanor, with a special allegation pursuant to Vehicle Code section 23538(b)(2) for a blood alcohol level of 0.20% or more, as follows:

a. On or about June 28, 2011, the California Highway Patrol received a citizen's report of a vehicle driving erratically and with a driver believed to be under the influence. The officer(s) responded and discovered Respondent driving erratically. After stopping the vehicle, the officer(s) detected the odor of alcohol, Respondent's eyes were red and watery, and she had slurred speech and an unsteady gait. When asked if she had been drinking, Respondent answered "two shots." Respondent was unable to successfully perform Field Sobriety Tests (FSTs), and she was placed under arrest. Breath tests registered blood alcohol levels of 0.21% and 0.23%.

1 b. On or about July 11, 2011, Respondent was charged by Complaint in Case No.
2 SCR-604740 with violating (1) Vehicle Code section 23152(a) (Driving under the influence of
3 alcohol or drugs), a misdemeanor, with a special allegation pursuant to Vehicle Code section
4 23538(b)(2) for a blood alcohol level of 0.20% or more, and (2) Vehicle Code section 23152(b)
5 (Driving with blood alcohol level of 0.08% or more), a misdemeanor, with a special allegation
6 pursuant to Vehicle Code section 23538(b)(2) for a blood alcohol level of 0.20% or more;

7 c. On or about August 29, 2011, Respondent pleaded nolo contendere and was
8 convicted of both counts and both special allegations. Imposition of sentence was suspended in
9 favor of a conditional sentence of thirty-six (36) months, on terms and conditions including four
10 (4) days in jail (1 day CTS), sixty (60) days with an alcohol-detecting (SCRAM) ankle bracelet, a
11 First Offender Drinking Driver Program, an alcohol prohibition, and fines and fees..

12 SECOND CAUSE FOR DISCIPLINE

13 (Dangerous or Injurious Use of Alcohol)

14 12. Respondent is subject to discipline under section 4301(h) of the Code, in that, as
15 described in paragraph 11 above, Respondent made dangerous or injurious use of alcohol.

16 THIRD CAUSE FOR DISCIPLINE

17 (Unprofessional Conduct)

18 13. Respondent is subject to discipline under section 4301 of the Code in that, as
19 described in paragraphs 11 and 12 above, Respondent engaged in unprofessional conduct.

20 DISCIPLINE CONSIDERATIONS

21 14. To determine the appropriate level of discipline, if any, to be imposed on Respondent,
22 Complainant further alleges that on or about July 19, 2008, Respondent was in a car being driven
23 by her sister, who was under the influence of alcohol, and when the car was stopped by police and
24 her sister was placed under arrest, Respondent showed signs of significant intoxication, including
25 belligerence toward police. Respondent was arrested and subsequently charged with violating
26 Penal Code section 647(f) (Public Intoxication - Unable to Care for Self). After she completed
27 and submitted proof of completion of thirty (30) AA meetings, the case was dismissed.
28

15. To determine the appropriate level of discipline, if any, to be imposed on Respondent, Complainant further alleges that on or about September 1, 2010, Respondent was involved in an incident wherein she was in a car in the drive-through lane of a fast-food establishment, and her car bumped the car in front of her in the lane. When the other driver said she was going to call the police, Respondent fled the scene, in violation of Vehicle Code section 20002 (Hit and Run).

P R A Y E R

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Pharmacy issue a decision:

1. Revoking or suspending Pharmacy Technician License Number TCH 12242, issued to Tammy M. Smith (Respondent);
2. Ordering Respondent to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as is deemed necessary and proper.

DATED:

1/7/13

Virginia Herold

VIRGINIA HEROLD

VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

SF2012402195
10937868.doc